

ESTTA Tracking number: **ESTTA472284**

Filing date: **05/14/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 91201226 |
| Party | Defendant bioMÃ©rieux, Inc. |
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| Submission | Answer |
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| Signature | /Janet Shih Hajek/ |
| Date | 05/14/2012 |
| Attachments | Answer to Notice of Opposition - VITEK.pdf (5 pages)(21031 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|----------------------------|---|--------------------------|
| Avista Technologies, Inc., |) | |
| |) | |
| Opposer, |) | Opposition No.: 91201226 |
| |) | |
| v. |) | Serial No. 77/531,903 |
| |) | |
| bioMérieux, Inc., |) | |
| |) | |
| Applicant. |) | |

ANSWER TO NOTICE OF OPPOSITION

Applicant, bioMérieux, Inc. (“Applicant”), by and through its attorneys, answers
Opposer Avista Technologies, Inc.’s (“Opposer”) Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief
as to the truth of the allegations of Paragraph 1 of Opposer’s Notice of Opposition and
therefore, denies those allegations.

2. Applicant admits the allegations of Paragraph 2 of Opposer’s Notice of
Opposition.

3. Applicant is without knowledge or information sufficient to form a belief
as to the truth of the allegations of Paragraph 3 of Opposer’s Notice of Opposition and
therefore, denies those allegations.

4. Applicant admits the allegations of Paragraph 4 of Opposer’s Notice of
Opposition.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of Opposer's Notice of Opposition and therefore, denies those allegations.

6. Applicant denies the allegations of Paragraph 6 of Opposer's Notice of Opposition.

7. Applicant denies the allegations of Paragraph 7 of Opposer's Notice of Opposition.

8. Applicant denies the allegations of Paragraph 8 of Opposer's Notice of Opposition.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of Opposer's Notice of Opposition and therefore, denies those allegations.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of Opposer's Notice of Opposition and therefore, denies those allegations.

11. Applicant denies the allegations of Paragraph 11 of Opposer's Notice of Opposition.

12. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of Opposer's Notice of Opposition and therefore denies those allegations.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 of Opposer's Notice of Opposition and therefore, denies those allegations.

14. Applicant denies the allegations of Paragraph 14 of Opposer's Notice of Opposition.

15. Applicant denies the allegations of Paragraph 15 of Opposer's Notice of Opposition.

16. Applicant denies the allegations of Paragraph 16 of Opposer's Notice of Opposition.

17. Applicant admits that Applicant's use of Applicant's Mark is without Opposer's license, permission or consent.

18. Applicant admits that registration of Applicant's Mark would provide Applicant with prima facie exclusive rights therein. Applicant denies the remaining allegations in Paragraph 18 of Opposer's Notice of Opposition.

19. Applicant denies that Applicant interferes with Opposer's right to continue using Opposer's VITEC Mark in connection with Opposer's Goods or that there is a likelihood of confusion, mistake, or deception.

All allegations in Opposer's Opposition that are not explicitly admitted herein are denied.

AFFIRMATIVE DEFENSES

Applicant asserts the following affirmative defenses and reserves the right to modify and expand these defenses as discovery proceeds:

First Affirmative Defense: Priority

Applicant has priority of use of the VITEK trademark through its prior use and registration as evidenced by U.S. Reg. No. 1,674,038.

Second Affirmative Defense: Acquiescence, Waiver, Laches and/or Estoppel

Opposer is barred from challenging Applicant's Mark by the doctrines of acquiescence, waiver, laches and/or estoppel.

WHEREFORE, Applicant prays that this Opposition be dismissed with prejudice and that Application Serial No. 77/531,903 be allowed to issue to registration.

Dated this 14th day of May, 2012.

Respectfully submitted,

/s/Andrea Anderson

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**Attorneys for Applicant
bioMérieux, Inc.**

CERTIFICATE OF SERVICE

I certify that on May 14, 2012, I served a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** to the following by:

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|--|----------------------------|
| <input checked="checked" type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | Fax |

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/s/Janet Shih Hajek